

## AMENDMENT NO. 3372, AS MODIFIED

Mr. SESSIONS. Mr. President, for decades, civilian employees of the United States working overseas were shielded from prosecution for criminal acts that were committed abroad. These persons were outside the scope of military justice, and they were beyond the jurisdiction of Federal courts in the United States, and also our State courts. Often, foreign countries, when incapable of investigating and prosecuting the cases, or they didn't have adequate laws, or they were not even criminal offenses in the foreign country, did not prosecute. Maybe the foreign country had no interest in prosecuting a fraud against the United States.

In 1999, one of my constituents approached me with a terrible story of how two innocent children were molested while living overseas with their father, who was an Army service person. Because the perpetrator of the crime did the act overseas, he was beyond the scope of jurisdiction in the United States. Moreover, German law didn't cover this, so the person was completely unprosecutable at that time.

After hearing this story, I began to work on and introduce the Military Extraterritorial Jurisdiction Act, which was signed into law eventually in the year 2000.

It provided U.S. Federal courts with jurisdiction over civilian employees, contractors, and subcontractors affiliated with the Department of Defense who commit crimes, and would have subjected that person to at least 1 year of prison had the offense occurred in the United States.

We worked with the Department of Defense, the Department of Justice, and the Department of State and produced legislation which I think was very helpful.

Now, in the war on terrorism, the Department of Justice is finding this statute very helpful. In fact, the contractors involved in the Abu Ghraib prison would probably not be prosecutable had we not passed this law some time ago.

But as we have looked at it, we understand there are some gaps that still exist.

Senator Schumer raised this issue in the Judiciary Committee, and I began to work on dealing with those loopholes.

This act will deal with what our previous act dealt with--those who were directly related to the Department of Defense, either contractors or civilian employees. But the abuses in Abu Ghraib involved private contractors who may not have in every instance been directly associated with the Department of Defense, and as such, perhaps those people--or some of them at least--might not be prosecutable under this statute. So it highlighted our need to clarify and expand the coverage of the act.

I offer an amendment today, and I am pleased that Chairman Warner and Ranking Member LEVIN have agreed to it. I believe it has been cleared on both sides and accepted by the managers.

This amendment would give the Justice Department authority to prosecute civilian contractors employed not only by the Department of Defense but by any Federal agency that is supporting the American military mission overseas.

The number of private contractors working in Iraq is about 10 times as great as it was in the Persian Gulf conflict.

Private contractors are necessary to rebuilding a healthy Iraq. Yet we cannot allow them to escape justice for crimes they may commit overseas.

I am not sure right now the Iraqi government has the ability or the interest in prosecuting a contractor who may have defrauded the United States. It clearly remains true that if they are to be prosecuted, it needs to be done here.

Our mission overseas is an honorable endeavor. It should not be tainted by illegal acts by any, particularly a few, who embarrass our country. Recent events have brought to light the need to ensure that those acting improperly are held accountable in a court of law.

This amendment clarifies existing precedent and leaves no doubt whether wrongdoers can be brought to justice. This includes physical acts against personnel by contractors. It also includes frauds that could be committed against the Department of Defense such as overcharging. Fraudulent activities of any kind could be prosecuted under this act.

I yield the remainder of my time to the Senator from New York, who, having suffered the blows of terrorism firsthand, has taken an interest in these matters for some time now. I am delighted to work with the Senator on this legislation.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, this amendment is an important amendment to this bill. It is passing with bipartisan cosponsorship, both the House and the Senate unanimously. It shows we can get things done in a bipartisan way. In good part that is because of my colleague from Alabama. I salute him for his leadership on this issue. He originally discovered the loophole about contractors who work for DOE, that they could not be prosecuted should they commit crimes abroad. He successfully passed a law last year about this issue.

When we discovered all the problems in the prisons in Iraq, it was clear that not all the contractors were contracted to by DOD. Other agencies contracted them. It made sense to me that we prosecute them as well. I believe it made sense to everybody. So I suggest to my colleague from Alabama that we work together to expand the amendment to include all contractors who work abroad who commit crimes or potential crimes.

As usual, we worked very well together on this. I thank the Senator for his leadership in passing the original bill, now law, and now amending this to broaden it.

The amendment Senator Sessions and I are offering today will close a dangerous loophole in our criminal law that would have allowed civilian contractors who do the crime to escape doing the time. As I mentioned, Senator Sessions closed part of this loophole a few years ago when he passed the Military Extraterritorial Jurisdiction Act and showed a great deal of foresight with that legislation.

The problem is that aside from Senator Sessions' bill there are negligently few provisions that give DOJ the power to go after civilian contractors. In short, if they do not contract with DOD, there is too strong a likelihood they will escape prosecution. Nothing in this amendment should be interpreted as undermining ongoing DOJ investigations or providing a basis for argument that DOJ does not have jurisdiction to prosecute contractor crimes in Iraq. Title 18, section 7, of the Criminal Code clearly confers such jurisdiction. This amendment covers contractors and territory for which title 18, section 7, does not confer jurisdiction.

I am proud to have worked with my colleague from Alabama to get this done. By passing this amendment today, this body gains stature because an important amendment is passed in a bipartisan way, and our country gains stature because the world sees when a crime is committed, unlike in so many other places in America, it is prosecuted.

With that, I yield back the remainder of my time.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Alabama [Mr. Sessions], for himself and Mr. Schumer, proposes an amendment numbered 3372, as modified.

The amendment is as follows:

(Purpose: To extend military extraterritorial jurisdiction to cover not only personnel and contractor personnel of the Department of Defense, but also personnel and contractor personnel of any Federal agency or provisional authority supporting the mission of the Department of Defense overseas, and for other purposes)

At the appropriate place, insert the following:

SEC. \_\_. CONTRACTOR ACCOUNTABILITY.

Section 3267(1)(A) of title 18, United States Code, is amended to read as follows:

“(A) employed as--

“(i) a civilian employee of--

((I) the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

((II) any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas;

((ii) a contractor (including a subcontractor at any tier) of--

((I) the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

((II) any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas; or

((iii) an employee of a contractor (or subcontractor at any tier) of--

((I) the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

((II) any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas;".

## SEC. \_\_. DEFINITION OF UNITED STATES.

Section 2340(3) of title 18, United States Code, is amended to read as follows:

((3) 'United States' means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States."

Mr. LEAHY. Mr. President, 4 years ago, I worked with Senators Sessions and DeWine to pass the Military Extraterritorial Jurisdiction Act, MEJA, which established Federal jurisdiction over crimes committed by civilians employed by, or accompanying, our military overseas. The Sessions-Schumer amendment further extends the jurisdictional authority we created in MEJA by closing a possible jurisdictional gap that could allow persons who commit crimes while accompanying our military overseas to escape justice. I support this amendment, and am pleased that the Senate has adopted it today. In addition, I thank the sponsors for accepting my addition to their amendment, which closes a similar jurisdictional loophole in Federal law.

Attorney General Ashcroft referred to this loophole last week, during his annual appearance before the Senate Judiciary Committee, while attempting to defend the Administration's position on torture. Interestingly, this loophole was created by legislative language that was proposed by the Department of Justice as a means of broadening, not shrinking, Federal criminal jurisdiction. This language, enacted as part of the USA PATRIOT Act, redefined the "special maritime and territorial jurisdiction of the United States" to include U.S. military bases and other U.S. Government properties in foreign States. The administration's summary of its proposal explained

that it would ``extend" Federal jurisdiction to ensure that crimes committed by or against U.S. nationals abroad on U.S. Government property did not go unpunished.

Unfortunately, the administration drafters of this proposal neglected to mention to Congress how it would impact on the Federal anti-torture statute. That statute prohibits torture committed ``outside the United States" by persons acting under color of law, and defines the term ``United States" to include the ``special maritime and territorial jurisdiction of the United States." By extending the special maritime and territorial jurisdiction of the United States, the PATRIOT Act effectively narrowed the reach of the anti-torture statute. Post-PATRIOT Act, the anti-torture statute may not allow for the prosecution of an individual who commits torture on a U.S. military base outside the United States.

My addition to the Sessions-Schumer amendment corrects this problem in a simple and straightforward way. It extends the anti-torture statute to apply, without exception, to acts committed outside the 50 States, the District of Columbia, and the commonwealths, territories, and possessions of the United States.

It may be that we should go further. Arguably, the anti-torture statute should be extended to apply anywhere in the world--both inside and outside the United States. I would welcome the views of the Department of Justice on this question. In the meantime, there are other Federal statutes that prohibit violence or excessive force by those acting under color of law within our borders.

Torture is one of the most serious crimes imaginable. I can think of no reason why the Federal Government should create safe havens for torturers anywhere in the world. To the contrary, we should use every means available to track them down and bring them to justice. The language that I have proposed, and that the Senate has accepted, will assist the Justice Department in doing just that.

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the amendment.

The amendment (No. 3372) was agreed to.

Mr. LEVIN. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.